92-1093

Supreme Court, U.S.
FILED
DEC 21 1992
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In the

Supreme Court of the United States

Betsey Warren Lebbos

Petitioner

vs.

John A. Arguelles, Malcolm Lucas, Allen Broussard, Edward Panelli, David N. Eagleson, Stanley Mosk, Marcus Kaufman, California State Bar, State Bar Court; L.J. Dewald

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals For the Ninth District

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Appellant *Pro Se*

QUESTIONS PRESENTED?

Do the principles of *Liljeberg v. Health Services Acquisition Corp,* (1988) 486 U.S. 847 compel reinstating a dismissed federal court complaint, when the dismissal was obtained by reason of non-disclosure of the financial interests of defendant state supreme court Justices in a private party and in the issues?

Should a complaint be reinstated when the federal district court judge dismissing it omitted to address the unconstitutionality of the most critical statute pled in the complaint?

Should a complaint be reinstated when the federal district court judge dismissing it was being criminally indicted on official corruption charges and would need to have the defendants re-admit him to practice law?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows:

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OPINION BELOW

The opinion of the Ninth Circuit Court of Appeals is attached at Appendix A. Its docket number is 89-15764. It was made and entered September 23, 1992.

JURISDICTION

This Court has jurisdiction to issue the writ of certiorari under 28 U.S.C. 1257. The constitutional issues were first raised in the federal court on February 27, 1989. This Petition is being filed within ninety days of entry of the judgment.

CONSTITUTIONAL PROVISIONS

Article 1, s. 10, cl. 1. No State shall... pass any bill of attainder... or Law impairing the Obligation of Contracts

Amendment V. No person shall be deprived of life, liberty, or property, without due process of law....

Amendment XIV, s. 1. No state shall ... deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a case of first impression. The issue is whether a dismissal of a federal court complaint, based on non-disclosure to the federal court by defendant state supreme court Justices and their counsel, the state attorney general, of their respective personal financial interests in the issues and in a private party, should be remedied on appeal by reversing the dismissal and remanding the case to the federal court.

All references hereinafter to "section(s)" refers to a section of the California Business and Professions Code.

In *Liljeberg v. Health Services Acquisition Corp.* (1988) 486 U.S. 847, this Court voided a judgment, after its finality, when a federal judge sat on the board of a college that stood to benefit financially from his judgment for a party and the judge had failed to disclose his interests in the issues and result.

Factual Background

The Appellant is an attorney for twenty one years. She is an attorney admitted and licensed to practice law in the First District of the United States District Courts and has been for over twenty years. She has no record as a federal court attorney. She is a registered voter in the State of California.

She is the attorney who discovered the Justices of the California Supreme Court were deciding attorney licensing cases since January 1, 1989 for "undisclosed cash" for themselves and their private appointees to the prosecuting party. She is also the attorney who discovered the state attorney general had been helping them, because he wanted the cash to pay his own private appointee. It is a classic "selling licenses" scheme. It involves state supreme court Justices creating a private court, with their private unelected judges, to license the state's lawyers. The accused lawyers are forced to "buy out" of discipline by delivering "under the robe" cash

pay-offs for the Justices' private appointees and for the Justices' individual judicial retention campaigns. If the attorney does not deliver the cash, he is disbarred. The records are falsified to accomplish the result. The "selling licenses" scheme was presented to this court. See 116 L. Ed.2d. 291 (1991).

This Court denied certiorari. See 112 S. Ct. 352, 116 L. Ed. 2d. 291 (1991). The record reflects the defendant Justices added seventy nine charges never filed or heard. The certified record indicates there was no evidence to support any charge.

Two years prior thereto, the Appellant sought to have the private court declared unconstitutional by the federal court. The defendant Justices did not disclose they were appointing private and unelected judges to it. They did not disclose their private appointees would be paid their private salaries and benefits as employees of the defendant state bar party from the funds obtained by imposing administrative costs by finding lawyers guilty. The defendant Justices did not disclose those monies might be used for their individual judicial retention campaigns. The Justices' counsel, the state attorney general, did not disclose the money from the private court would pay his private appointee. By reason of the non-disclosures of the defendant Justices and their counsel to the federal court, the federal court abstained. It dismissed without addressing the constitutionality of the state bar court. Had the federal court not been misled by the defendant Justices and their counsel, it would have had to assume jurisdiction to decide the constitutional issues, since there is no state court of

competency available to hear them. The Ninth Circuit has affirmed the dismissal. It alleges the issues are moot. The Appellant submits the issues are not moot. When judgments are obtained through non-disclosure of financial interests by defendant judges and their counsel, the only remedy is to void the dismissal, which was obtained only because of the non-disclosure, and reinstate the complaint.

ARCUMENT

I.

SHOULD NOT THE COMPLAINT BE REINSTATED AS THE FEDERAL COURTS FAILED TO ADDRESS THE CONSTITUTIONALITY OF THE STATE BAR COURT STATUTE?

The Complaint seeks a declaration of unconstitutionality to two separate state statutes. One statute is the state bar court statute. Section 6086.5. The other is the involuntary inactive enrollment statutes. Section 6007(c).

Both the federal district court and the Ninth Circuit dismissed the complaint by addressing only one of the statutes pled in the Complaint. Each solely addressed the unconstitutionality of the involuntary inactive enrollment statute. Section 6007 (c). Appendix A.

The creation of the state bar court, by statute, was alleged to be unconstitutional in the complaint and in the briefs submitted, to both the federal district court and the Ninth Circuit Court of Appeals. It was alleged to be a private, financially

interested court. It was alleged to be a court created in violation of the right of the citizens to vote to create their own courts and elect and remove their own judges to their own courts. These are voter issues. The complaint pleads, "Defendant State Bar of California, is a public corporation. They are charged with the unlawful and fraudulent creation of the `state bar court,' in deliberate defiance of the Constitution of the State of California, and the Constitution of the United States, prohibiting their creation of a "Court." "Courts" are to be created by the people by constitutional amendment only; the State Bar has no authority to create a " Court." App. C-3: 11-19. The relief requested is "Grant Plaintiffs declaratory judgment that California Business and Professions Code section 6086.5 is unconstitutional on its face as it purports to establish a State Bar Court where only the People of the State of California have the power to establish a "Court" in the State of California." App. C-11: 4-14. Injunctive orders were requested to enjoin the operation of the claimed state bar court. App. C-11: 8-13.

When the federal district court dismissed the complaint, it did not address the unconstitutionality of the state bar court statute and the issues of it being an unconstitutional court. The Ninth Circuit erroneously states, "Lebbos complaint and appeal challenge only the procedures allowing the State Bar to put an attorney on involuntary inactive status pending final disbarment proceedings. Since Lebbos is no longer a California attorney, she is no longer subject to this rule." Appendix A. The complaint's specific language concerning the unconstitutionality of the state bar court and the relief requested to

declare the state bar court statute separately unconstitutional belies this claim.

The state bar court statute gives a private, financially interested court to private people against the voters' will. The latter gives them judicial power. Both issues were briefed and submitted.

The unconstitutionality of the state bar court is an issue still unresolved, even though the issue was pled and presented, both to the federal district court and to the Ninth Circuit Court of Appeals. If the state bar court is unconstitutional, its acts are void *ab intitio* under *Norton v. Shelby County,* 118 U.S. 425, 30 L. Ed. 178, 6 S. Ct. 1121. It is irrelevant whether the involuntary inactive enrollment statute need not be addressed, because the Appellant is no longer subject to that statute. She is still a voter who pled her voter's rights were abrogated by the creation of a private court. Her rights as a voter are daily being violated and have been continuously since January 1, 1986. Her rights as a voter need to be addressed. The defendant state Justices may not decide the constitutionality of the claimed state bar court. They appointed its private judges, who are paid their salaries from the funds obtained by finding lawyers guilty.

II.

DOES NOT STANDING EXIST DUE TO THE EXISTENCE OF THE SUSPENSION RECORD?

In ruling the Plaintiff no longer has standing as she, after the fact of the dismissal, was disbarred

by the defendants as a state lawyer, the Ninth Circuit relies on *DeFunis v. Odegaard,* 416 U.S. 312, 319-320 (1974). In that case, a student who challenged an admissions policy was held to no longer have standing when he was in his last quarter at school.

In *Shipp v. Todd,* 568 F. 2d. 133 (1978)(Ninth Cir.) it was held that, even though a state prisoner had served the sentence imposed, the maintenance of his criminal records continued to operate to his detriment. He was entitled to have the court consider his claims and expunge the record.

The issue presented is which authority controls? The Appellant has a record of a temporary suspension, and then a state disbarment. Both were and are the product of patently unconstitutional statutes. If the state bar court is an unconstitutional court, a declaration private people may not have a private court, commences the expungement process. It declares the *ex parte* taking to the Appellant for over two years, and the disbarment unconstitutional as the product of an unconstitutional private court. It prevents other attorneys suffering the defendant Justices' undisclosed financial interests operating.

III.

IS THIS NOT A CASE OF EXCEPTION TO MOOTNESS AS A CASE "CAPABLE OF REPETITION BUT EVADING REVIEW"?

Since the defendants state Justices and state bar have concealed in the over two hundred state bar decisions they have issued since January 1, 1989 that

the defendant Justices appointed nine private appointees to the state bar party, that over one million dollars is needed to pay their appointees, and that the monies come from the "administrative costs" imposed on finding lawyers guilty, and said sums are available to assist the Justices' individual retention campaigns, this operates to make this a case of not only repetition, but of evading review. The non-disclosure operates to prevent review.

Does not this case fall within the "capable of repetition, but evading review" exception to mootness claims, as enunciated in *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911)?

IV.

SINCE THE STATE BAR IS NOT A COURT, IS NOT THE DISMISSAL FOR LACK OF SUBJECT MATTER ERRONEOUS

The Ninth Circuit states, "orders of a state court relating to admission, discipline, and disbarment of members of its bar may be reviewed only by the Supreme Court of the United States...", *Mackay v. Nesbett* 412 F. 2d. 846 (9th Cir. 1969), cert. denied 396 U.S. 960, 90 S. Ct. 435, 24 L. Ed. 2d. 425 (1969). Thus, the district court lacks jurisdiction to review such matters." Appendix A-4.

The record reflects there was no order from a state court involved.

The Ninth Circuit admits there was no state court order. It states, "Lebbos' complaint and appeal challenge only the procedures allowing the state bar to put an attorney on involuntary inactive status pending final disbarment proceedings." The act complained of is that of a state bar association. It is not a state court. Its acts are not state court orders. Constitutionally, the state bar association is limited to being a public corporation. Article 6, section 9, Ca. Constitution. In addition, no new courts could be added in the state since 1966 unless the voters amended their constitution. Article 6, section 1, Ca. Constitution. In addition, the defendant Justices may not select any judges to any state court. Article 6, section 16, Ca. Constitution. Thus, in order to determine whether a state court order was involved, the federal court was required to and failed to decide the constitutionality of the state bar court statute, which was addressed and pled in both the complaints and in the briefs to both the federal court and the Ninth Circuit. Section 6007(c). The federal district court failed to address the statute, as does the Ninth Circuit Court on appeal. Without a ruling that the state bar court is a state court, and that it may license lawyers in place of a competent state supreme court, and with no order from any constitutional court of law, the *Mackay, supra,* ruling did not and does not apply.

Since both the federal district court and Ninth Circuit failed to address whether *Mackay, supra,* applied to a claimed state bar court, when it is not a constitutional court of law, should not certiorari be granted to determine whether certiorari is available from its claimed "orders" ?

V.

GIBSON V. BERRYHILL CONFERS SUBJECT MATTER JURISDICTION

Gibson v. Berryhill (1973) 92 S.Ct.. 2487, 408 U.S. 920, 33 l. L. Ed.2d. 331, 93 S. Ct. 168, 411 U.S. 564, confers subject matter jurisdiction on the federal courts to declare and enjoin private financially interested opponents delicensing each other and to determine the constitutionality of the state processes involved. This was the basis of subject matter jurisdiction pled and proved to both the district court and the Ninth Circuit Court of Appeals. The state bar issuing the inactive alleged order was the Appellant's opposing party and lawyer in on-going civil litigation. [1]

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[1] The Petitioner had on-going civil litigation with the state bar since 1986. It concerned the defendant state bar obtaining an *ex parte* judgment for $32,765.64 for itself against the Appellant without notice. It was for claimed "costs" from a failed proceeding. Before it could be voided, the state bar enrolled the Appellant as an inactive member, also *ex parte*, as a harm to its "Public." To do so, the state bar falsified the transcripts to a lay hired referee in its claimed state bar court. There was no notice. There was no hearing. This occurred February 17, 1989. On May 11, 1989 the Sixth Appellate District Court voided the $32,765.64 judgment. It awarded the Appellant her costs against the state bar. Because of the defendant Justices' nondisclosure they were appointing nine employees to the state bar, the Appellant did not know they personally wanted the $32,765.64 for their private appointees to it and for their judicial retention campaigns. *Lebbos v. State Bar*, Sixth Appellate District Court, docket no. H003074 (1989).

Neither the Ninth Circuit nor the Federal Court addressed the *Gibson, supra,* subject matter jurisdictional issues. *Gibson, supra,* is either an "extraordinary circumstance" exception to abstention or a special rule where abstention does not apply due to board bias.

The Ninth Circuit's ruling and that of the federal district court implies *Gibson, supra,* does not apply to attorneys. If that is true, this Court should publicly declare it does not apply to attorneys.

VI.

WHEN THE FEDERAL JUDGE WAS BEING INDICTED, SHOULD NOT HIS DECLINING TO REQUEST ANOTHER JUDGE HEAR THE CASE, COMPEL A REVERSAL OF THE DISMISSAL

The Honorable Robert Aguilar, the federal judge involved, was being indicted imminently on federal charges of official corruption. He has since been convicted. His appeal has been pending in the Ninth Circuit with the Appellant's case. The Appellant filed a motion for the Ninth Circuit to request the assignment of disinterested Justices from other circuits. The motion was never acted upon.

Under the objective person test of *Liljeberg, supra,* a person aware of the facts, might reasonably entertain a doubt the federal judge could be fair and impartial when he was being indicted and would need the defendants to re-admit him to practice law. This unique dependency of the federal judge

personally on the defendants Justices and state bar is a factor never present in other federal cases, since generally federal judges enjoy life term tenure. In this case, the federal judge's conflict of interest was clear. The Appellant requested another judge be assigned to the case, because of the federal judge's unique circumstances. The failure to do so resulted in substantial prejudice and harm to the Appellant. Even though the transcripts were not available for the Appellant to prove the defendant state bar had falsified the charges and the record to its hired referee acting *ex parte*, the federal judge claimed the numerous misdeeds were well-founded. He had no no record to substantiate any such claims. He refused to apply or consider the *Gibson, supra,* exception to abstention, which warranted immediate relief. He dismissed the Complaint, when it addressed the unconstitutionality of the state bar court, and he never mentioned it.

Should not the complaint be reinstated, since the federal judge's dismissal was based on a bias for the defendants caused by his personal dependency on them, arising from his imminent criminal indictment, and this resulted in an erroneous dismissal?

VII.

Since the Involuntary Inactive Enrollment Statute Prevents Defense, Does Not the Plaintiff have standing to Challenge Its Constitutionality?

The issues concerning the unconstitutionality of the involuntary inactive enrollment statute concern a private person in a bar association, hired and paid to do, based on *ex parte* claims of his co-employee prosecutor about what happened in a recommendatory proceeding, without notice or hearing to the accused, and with no transcripts, taking the lawyer's business and career in ten days. The statute is facially a Bill of Attainder. The accused attorney is bankrupted immediately. There is no judicial licensing of the lawyer. There is no court access. There is no way for the attorney to prove the claims are untrue. The transcripts are unavailable. Then there is no post-taking court access or disposition for over two years.

The Ninth Circuit states the fact the attorney was disbarred as a state lawyer two years after the *ex parte* taking moots out the issue of the unconstitutionality of the involuntary inactive enrollment statute. Is not the state disbarment by financially interested defendant Justices, who concealed their financial interests from the federal court, and refused a hearing for over two years, the "fruit of the poisonous tree?" With the taking preceding the rights to any due process of law by over two years, the state disbarment is the damages from the unconstitutionality of the involuntary

inactive enrollment statute. When the Appellant learned the defendant Justices were running a "selling licenses" scheme with a state bar association by forcing lawyers to give their private appointees money for themselves and for them in order to be publicly licensed, and that they were concealing their personal financial interests in each case, in order to obtain the money, she did not have the money to keep her lights on. The defendant Justices knew the Appellant was aware they had concealed their financial interests in her case from the federal court. They denied ten petitions for a hearing for over two years. They ignored the filing indicating innocence of each charge. They wrote and called the Appellant telling her not to expose them. The Appellant refused to comply with their threats.

Attorneys have a property interest in their vested licenses to practice law. *In re Ruffalo* (1968) 390 U.S. 544, 550. Statutes that have no prompt post-deprivation final adjudications deny due process of law. *Gershenfeld v. Justices of the Supreme Court of Pennysylvania* (E.D. Pa. 1986) 641 F. Supp. 1419, *Goss v. Lopez* (1975) 419 U.S. 565, 579; see also *Cleveland Board of Education v. Loudermill* (1985) 470 U.S. 532, 557 They exert financial duress of the worst kind, so that the accused is unable to defend disbarment. Without funds to hire an attorney, they are denied the ability to hire one. Without funds for transcripts and exhibits, they can not reproduce them for presentation. In the instant case, the Appellant knew the Justices' non-disclosure to the federal court meant they were disbarring and suspending lawyers on falsified records in order to obtain monies for

their private appointees and themselves. She filed her 202 page brief under state law with a state court of appeal. Section 6082. It contained the certified records indicating her innocence. It contained the evidence the defendant state bar had falsified both the charges and the evidence in its submissions to its hired referees and to all courts. The defendant Justices decline to follow state law permitting an attorney to file his petition to review with a state court of appeal. They want to review all state bar cases. They do so, because they have a financial interest in each case. They want to obtain the money. As a result, the defendant Justices ignored the Appellant's filing and record of innocence, and denied her a post-private taking for over two years, while sending her letters and calling her, threatening to disbar her if she exposed them.

Had no prior taking occurred, when these threats were made by the defendant Justices, the Appellant would have been able to file a new federal court action for declaratory and injunctive relief to restrain them from licensing her, hearing her case, and from further threatening her. Without income, job, career, or business, occasioned by the *ex parte* taking, the Appellant had no ability to restrain the irreparable harm and injury she knew they were going to cause her by disbarring her as a state lawyer on falsified records and claims arising from their undisclosed financial interests in state bar cases.

Given the fact the involuntary inactive enrollment statute has no prompt post-taking processes, the delay was over two years in the

Appellant's case, and the statute has no provision for obtaining a competent court of law to provide such processes, does not the Plaintiff have standing to challenge the statute as it prevented her obtaining a competent court of law to prevent disbarment?

VIII.

SHOULD THERE BE A CIVIL REMEDY WHEN DEFENDANT STATE JUDGES AND THEIR ATTORNEY DO NOT DISCLOSE THEIR FINANCIAL INTERESTS IN ISSUES AND IN A PARTY TO THE FEDERAL COURT?

In *United States v. Whitten*, 706 F. 2d. 1000, 1012 (9th Cir. 1983), cert. denied, 465 U.S. 1100, 104 S. Ct. 1593, 80 L. Ed. 2d. 125 (1984), it was held a court of appeals may consider arguments not raised in the district court if it is based on a change in the law or if it is an issue of law not dependent on factual record developed by the parties. *Abramson v. Brownstein* (1990) 897 F. 2d. 389 (9th Cir. 1990).

The Appellant submitted to the Court of Appeals the change in the law. The change in the law was unknown to the Appellant and the federal court. It was not disclosed by the defendants to the federal court. That change in the law, commencing January 1, 1989, involves the defendant Justices appointing employees to the state bar party, to sit as claimed judges to the claimed state bar court. Section 6086.65, 6079.1. It concerned the Justices' appointees being paid from the funds obtained by the defendant Justices finding lawyers guilty and denying all accuseds' issues. Section 6086.10(b).The

defendant Justices knew they were making the appointments while the federal court litigation was pending. They had *ex parte* communications with the defendant state bar. By statute, they had the list of the defendant state bar's twenty one nominees before April 1, 1989. Sections 6079.1, 6086.65. The defendant state bar did not disclose they had sent the list. The defendant Justices did not disclose it had the list and was making the appointments. Since the hearing in federal court was conducted April 28, 1989, this was a substantial non-disclosure to the federal court of material facts. The dismissal and destruction of the plaintiff's business could not have occurred had the defendant Justices and state bar disclosed their *ex parte* communications and personal and financial interests against the Appellant and her constitutional issues to the federal court.

The ABA Model Rules of Professional Conduct, Rule 3.3, "Candor Toward the Tribunal,"(a)(2) states " A lawyer shall not fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client." The State Attorney General representing the defendant Justices failed to disclose both his own personal financial interest and that of his clients against the Appellant and in preventing the federal court ruling. His personal financial interest arises from section 6086.9. This section was passed in 1986. It provides for the state attorney general to appoint and contract with a state bar discipline monitor. His appointee is paid from the defendant state bar's funds. Those funds include the monies obtained by lawyers being found guilty and "administrative costs" imposed. If the state bar

court and involuntary inactive statutes were declared unconstitutional, the state attorney general might not be able to obtain the money to pay his private appointee. The State Attorney General, knew of his conflict of interest. He refused to disclose it the federal court. Likewise, the State Attorney General did not disclose his client's personal financial interests in the issues, although he knew of them.

The State of California has no disclosure requirements imposed on its state lawyers or officials. Its ethical rules are rejected by the American Bar Association. Compare ABA Model Rules of Professional Conduct with California's state statutes, section 6000 *et. seq.*

Concerning the duty of disclosure of judges, the American Bar Association Model Judicial Code, Canon 3C(1) states "A judge should disqualify himself in a proceeding in which his disqualification is required by law, or his impartiality might reasonably be questioned." This includes when "he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." The duty of recusal extends to a judge "having a financial interest in the subject matter in controversy or any other interest that could be substantially affected by the proceedings." Canon 3C(1)(c). "Financial interest" includes "a relationship as director, advisor, or other active participant in the affairs of a party." Canon 3C(3)(c). Canon 3D provides, "A judge disqualified by the terms of Canon 3C(1) or Canon 3(c)(1(d), may, instead of withdrawing from the proceeding, disclose on the record the basis of the

disqualification." The rule states the judge may sit, if all parties and counsel of record independently sign and file a written waiver of the judge's disqualification, after the judge's disclosure. The California Judicial Code is identical to the ABA Judicial Code.

The defendant Justices have disbarred and suspended over two hundred attorneys since January 1, 1989. In all two hundred cases, they have done so without disclosure they have appointed nine employees to the prosecuting party, that their appointees require a million dollars a year, and that the monies to pay them are assessed against the accused as administrative costs upon the accused being found guilty. No written waivers have ever been filed.

What is the remedy when state judges as defendants, and their counsel, obtain dismissal of a federal court action and prevent access to a disinterested court to hear a party's issues and take her career by failing to disclose material facts to the federal court, which disclosure was required to prevent a criminal or fraudulent act? Should not the analogy to *Liljeberg, supra,* be applied? Is this not necessary in order to not reward wrongdoers, who violated their ethical and legal duties to be honest and truthful with the federal court, and who participated in a conspiracy to not disclose material facts to the federal court in order to prevent the Appellant having access to any court for redress?

IX.

SINCE THE ISSUE OF IMMUNITY IS DEPENDENT ON THE CONSTITUTIONALITY OF THE CLAIMED STATE BAR COURT, SHOULD NOT A DETERMINATION BE MADE OF ITS CONSTITUTIONALITY ?

While the complaint requested declaratory relief to declare the statute, section 6086.5, permitting twenty three persons in a bar association to create a private state bar court unconstitutional, both the district court and Ninth Circuit Court of Appeals ignored this issue in the Complaint.

Since the State Constitution limits the state bar to being a corporation, Article 6, section 9, and the voters deleted all legislative authority to create any new courts in 1966, Article 6, section 1, Ca. Constitution, the statute is clearly unconstitutional as a violation of the right to vote of the citizens and the Plaintiff. The Plaintiff also has an interest as a consumer in not having available to her only those lawyers, who should have been disbarred, but who "bought out" under the state bar court system, while it, as a private financially interested, for profit court, disbars competent and decent lawyers who refuse to deliver the "under the robe" cash and it does so without evidence, proof, and by falsifying records.

Thus, the question of immunity rests on issues not decided. The state bar court is not the administrative arm to the California Supreme Court. There is no constitutional authority for its existence in the State. If it is unconstitutional, it can not be the

arm to anything, as its existence is void *ab intitio*. Since the defendant Justices and state bar have neither judicial nor legislative authority to create any courts in the State, their immunity issue rests on whether they, acting outside the scope of thier limited judicial authority, usurped personally the rights of the voters in creating a private, for profit court when they are constitutionally prohibited from creating any courts. See *Lopez v. Vanderwater* (1980) 620 F. 2d. 1229.

CONCLUSION

Since the dismissal was premised on an erroneous claim to mootness, and the unconstitutionality of the state bar court statute remains unresolved, the petition for a writ of certiorari should be granted to determine whether the principles of *Liljeberg, supra,* compel voiding the dismissal for failure of disclosure by defendant state supreme court Justices, their counsel, and their co-defendant state bar of their respective substantial financial interests personally in the issues, the subject, and the result, to the federal courts, as ethically, morally and legally required.

RESPECTFULLY SUBMITTED,

Betsey Warren Lebbos

BETSEY WARREN LEBBOS
Petitioner / Attorney *Pro Se*
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408-279-3100

VERIFICATION

I have read and prepared the foregoing Petition for a Writ of Certiorari and declare under penalty of perjury that its contents are true and correct, based on my own personal knowledge and belief, and this Verification is executed this 21st day of December, 1992 at San Jose, California.

Betsey Warren Lebbo

BETSEY WARREN LEBBOS
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APPENDIX

Not for publication

United States Court of Appeals
For the Ninth Circuit

No. 89-15764
CT/AG#:CV-89-20140-RPA

Filed

September 23, 1992

Cathy A. Catterson,Clerk

Betsey Warren Lebbos

Plaintiff-Appellant

vs.

John A. Arguelles, Malcolm Lucas, Allen Broussard, Edward Panelli, David N. Eagleson, Stanley Mosk, Marcus Kaufman, California State Bar, State Bar Court; L.J. Dewald

Defendant- Appellees

Appeal from the United States District Court
for the Northern District of California
Robert P. Aguilar, District Judge, Presiding

Submitted February 13, 1992
San Francisco, California

Before: HALL, WIGGINS, Circuit Judges, and Muecke, District Court Judge

Appellant, Betsey Warren Lebbos, appeals the District Court's dismissal of her complaint for lack of subject matter jurisdiction. We affirm.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this Circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for disposition without oral argument. Fed. R. App. R. 34 (a): 9th Cir. R. 34-4.

*** Honorable C.A. Muecke, Senior United States District Judge for the District of Arizona, sitting by designation.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff/ Appellant Betsey Warren Lebbos is an attorney who was licensed to practice law in the State of California. Defendant/Appellees are the California State Bar, State Bar Court, Justices of the California Supreme Court and an appointed referee of the State Bar Court. On January 9, 1989 the California State Bar Court found Lebbos culpable of professional misconduct and recommended to the California Supreme Court that she be disbarred. On February 17, 1989, after reviewing the State Bar's Court's findings, referee Deward placed Lebbos on inactive status finding her

to be a danger to the Public. On March 18, 1991, the California Supreme Court disbarred *Lebbos v. State Bar*, 53 Cal. 3d. 37, 278 Cal. Rptr. 845, 806 P. 2d. 317, cert. denied..... U,.S., 112 S. Ct. 352, 116 L. Ed. 2d. 291 (1991). In August of 1991, Lebbos filed petitions for writ of certiorari in the United States Supreme Court in Betsey Warren Lebbos v. State Bar of California, No. 91-5542 and Robert Philip McNamee and Betsey Warren Lebbos v. the State Bar Court, et. al., No. 91-355 challenging the constitutionality of the California Attorney regulatory system. On October 21, 1991, the United States Supreme Court denied both petitions.

After Lebbos was placed on inactive status but before she was disbarred, Lebbos filed this action pursuant to 42 U.S.C.A. s. 1983 in United States District Court challenging the constitutionality of the statutes that allowed the state bar of California to involuntarily place her on inactive status prior to a determination of disbarment by the California Supreme Court, plaintiff sought an injunction, damages and injury to her law practice and emotional distress and punitive damages. The defendants filed a motion to dismiss pursuant to rules 8(a) and 12(b) of the Federal Rules of Civil Procedure. The District Court granted the motion finding that 1) it lacked subject matter jurisdiction to review the California Supreme Court's order relating to admission, discipline, and disbarment of the members of its bar as such orders are reviewable only by the United States Supreme Court on certiorari to the state court and (2) to the extent that the petition was denied because the wrong form of relief was sought and the California Supreme Court

has not made a final determination on plaintiff's claims it was required to abstain from exercising subject matter jurisdiction over Lebbos' claims.

DISCUSSION

1. Standard of Review

The district court's dismissal of a complaint is reviewed *de novo*. *Abramson v. Brownstein,* 897 F. 2d. 389, 391 (9th Cir. 1990); *Rosenthal v. Justices of the Supreme Court of California*, 910 F. 2d. 561, 564 (9th Cir. 1990), cert. denied, sub. nom. *Rosenthal v. Broussard*,..... U.S....., 111 S. Ct. 963, 112 L. Ed. 2d. 1050 (1991). An order of dismissal should be affirmed on appeal if it is sustainable on any basis fairly supported by the record. *City of Las Vegas v. Clark County* 755 F. 2d. 697, 701 (9th Cir. 1985).

II. Did the district court err in determining it lacked jurisdiction to review the California Supreme Court decisions and that it must abstain from reviewing pending state court actions?

Orders of the state court relating to admission, discipline, and disbarment of members of its bar may be reviewed only by the Supreme Court of the United States on certiorari to the state court, and not by means of an original action in a lower federal court. *Mackay v. Nesbett,* 412 F. 2d. 846 (9th Cir.1969), cert. denied, 396 U.S. 960, 90 S. Ct. 435, 24 L. Ed. 2d. 425 (1969). Thus, the district court lacks jurisdiction to review such matters.

As to Lebbos' constitutional challenge to the disciplinary rules, insofar as she seeks injunctive relief, the issue is rendered moot by Lebbos" disbarment by the California Supreme Court. See *Defunis v. Odegaard,* 416 U.S. 312, 319-320 (1974) (challenge to admission policy of law school rendered moot when student in last quarter of law school at time of hearing and was no longer subject to admissions policy.) Lebbos' complaint and appeal challenge only the procedures allowing the State Bar to put an attorney on involuntary inactive status pending final disbarment proceedings. Since Lebbos is no longer a California attorney she is not longer subject to this rule. Thus, her action for injunctive relief is moot.

Insofar as Lebbos' action seeks monetary damages, the district court is barred from exercising jurisdiction because all appellees enjoy immunity from suit for acts performed as an integral party of their duties.

First, the California State Bar, the State Bar Court, and Deward act in a quasi-judicial capacity as an arm of the California Supreme Court. Cal. Consti. Article VI, s. 9; Cal. Bus. and Prof. Code s. 6001. Thus, they are shielded by quasi-judicial immunity from liability arising from performance of their duties which are an integral part of the judicial process. *Ship v. Todd,* 568 F. 2d. 133 (9th Cir. 1978); (immunity for court clerk); *Agnew v. Moody* 330 F. 2d. 868 (9th Cir.), cert. denied, 379 U.S. 967 (1964)(immunity for prosecuting attorneys): *Duzanski v. Nosal* 324 F. 2d. 924 (7th Cir.

1963)(immunity for court-appointed doctors serving as advisers to the court).

Second, as to the Justices to the California Supreme Court, Lebbos concedes in her opening brief that she does not seek monetary damages from the Justices. Nevertheless, insofar as the Justices promulgated the attorney disciplinary rules they acted in a legislative capacity and in that capacity the courts and its members are immune from suit. *Supreme Court of Virginia v. Consumer's Union,* 446 U.S. 719, 734 (1980). Insofar as the Justices acted in their adjudicatory or judicial capacity they are protected from suit by judicial immunity. See *Forrester v. White*, 484 U.S. 219, 226-27 (1988).

AFFIRMED.